IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D ER

Gordhan v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.895/1993
under Articles 226 and 227 of the Constitution of India.

Date of order : 4th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. V.N.Calla, for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.
Mr. R.K.Singhal, for the respondent No.4.

BY THE COURT :

By this writ petition a challenge is given by the petitioner to the judgment dated 1.2.1993 passed by Additional Collector, Hanumangarh exercising revisional powers under Section 17(4) of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as “the Act of 1953”) read with Rule 272 of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter referred to as “the Rules of 1961”).

The facts in brief are that the petitioner submitted an application to Gram Panchayat, Kheruwala Panchayat Samiti, Sadulsahar, District Sriganganagar for purchase of a abadi land from the panchayat. On receipt of an

application a plan was prepared and local inspection of site was made by three panchas nominated by the Panchayat. A requisite public notice was also issued and the objections were also invited. The land thereafter was placed for auction and the same was sold to the petitioner being the highest bidder. The petitioner deposited a sum of Rs.1100/- with Gram Panchayat as consideration and thereafter requisite patta was issued by the Panchayat. A challenge to the same was given by respondent No.4 Shri Prithviraj by way of filing a revision petition before the Additional Collector, Hanumangarh. The learned Additional Collector by judgment impugned accepted the revision petition holding therein that the patta was required to be issued in accordance with Rule 271 of the Rules of 1961 but the same was issued by the Panchayat under Rule 266 of the said Rules. The Additional Collector also held that the sale was not confirmed as required to be made under Rule 265 of the Rules of 1961. On the counts above the Additional Collector accepted the revision petition and set aside resolution of orders of Panchayat as well as of Panchayat Samiti with regard to sale of land to the petitioner. The Additional Collector ordered to maintain status quo and to decide the question with regard to old possession over the land by holding an inquiry and by giving an opportunity of hearing to the parties. Being aggrieved by order dated 1.2.1993 this writ petition is preferred by the petitioner.

A reply to the writ petition has been filed on behalf of respondents No.1, 2 and 3. The respondents have given just and formal reply in defence and the proceedings pertaining to sale have not been placed on record.

Be that as it may, I have heard counsel for the parties and also perused the judgment impugned.

It is contended by the counsel for the petitioner that the order impugned deserves to be quashed and set aside as the Additional Collector himself found that the respondent No.4 failed to produce any evidence on record to prove his possession over the land and also that before sale of land requisite proceedings under the Rules of 1961 were completed.

From perusal of order impugned it appears that the Additional Collector, Hanumangarh examined record of Gram Panchayat and held that an application was preferred by the petitioner showing his desire to purchase abadi land from Gram Panchayat, on receipt of such application Gram Panchayat prepared a plan and thereafter three panchas were nominated to inspect the site. The inspection was also made. A provisional decision to sale the land was also taken by the Gram Panchayat. The Gram Panchayat also issued a public notice and invited the objections. The land in question was put to auction and the petitioner

was the highest bidder. The only illegality found by the Additional Collector, Hanumangarh was that the patta was issued by mentioning Rule 266 in place of Rule 271. Mere mentioning of wrong provision does not mean that patta was issued by private negotiations under Rule 266, when the facts are already available on record to prove that auction took place and the petitioner was highest bidder. Mere mentioning of wrong provision does not make the entire proceedings illegal. It is also found that the sale was confirmed in accordance with Rule 265 of the Rules of 1961.

In view of whatever stated above I found that the Additional Collector committed an error which required to be rectified by this Court under Articles 226 and 227 of the Constitution of India. The order impugned dated 1.2.1993, therefore, deserves to be quashed.

Accordingly, the writ petition is allowed. The order dated 1.2.1993 passed by Additional Collector, Hanumangarh in revision petition No.126/92, Prithviraj v. Vikas Adhikari, Panchayat Samiti, Sadulsahar & Ors., is hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.